

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

STUART ROSENBERG,

Plaintiff,

v.

THE HOME DEPOT U.S.A., INC. A Foreign
Corporation, d/b/a THE HOME DEPOT.

Defendants.

No. 1:16-cv-05272

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Defendant, HOME DEPOT USA, INC. (“Home Depot”), by its attorneys, McVey & Parsky, LLC, submits this Motion for Summary Judgment under Fed R. Civ. P. 56 (1).

1. This case involves Stuart Rosenberg, who allegedly sustained injuries while shopping at the Niles, Illinois, Home Depot. Plaintiff claims that he suffered injuries when he tripped over the forks of a forklift that was parked in an aisle in Home Depot’s garden department.

2. Plaintiff asserts a negligence claim against Home Depot.

3. Plaintiff’s claim is without merit because, among other things, Home Depot did not owe a duty to Plaintiff.

a. The forks were an “open and obvious” condition under Illinois law.

b. Neither exception to the open and obvious doctrine applies because Plaintiff was not distracted or compelled to take the path he chose to take.

4. Accordingly, Home Depot did not owe Plaintiff a duty.

5. Plaintiff has disclosed an expert, R. Kevin Smith, who opined that the placement of the forklift violated OSHA regulations. That claim is irrelevant to the existence of a duty, however, because the Illinois Supreme Court and Appellate Court, as well as this Court, have recognized that OSHA regulations do not create a duty.

6. Defendant has contemporaneously filed a Statement of Undisputed Material Facts, supporting exhibits, and a Memorandum of Law in support of this Motion.

7. The Court has subject matter jurisdiction to hear this case and decide this motion because Plaintiff is a resident of the State of Illinois and not Georgia or Delaware. Home Depot is incorporated under the laws of the State of Delaware and maintains its principal place of business in Georgia. [Ex. A, ¶¶ 1–2]. Plaintiff’s claimed damages exceed \$75,000. [*Id.*, ¶ 5].

8. Venue is proper because the alleged incident occurred in Niles, Cook County, Illinois. [*Id.*, ¶ 3].

WHEREFORE, Defendant, HOME DEPOT U.S.A., INC., requests that the Court grant its Motion for Summary Judgment and issue an Order entering judgment in favor of HOME DEPOT U.S.A., INC. Additionally, Defendants request Oral Argument on their Motion.

Respectfully submitted,

HOME DEPOT U.S.A., INC.

BY: /s/ Jonathan R. Sichtermann
Jonathan R. Sichtermann (6313992)
One of its attorneys

Jonathan R. Sichtermann
McVEY & PARSKY, LLC
30 North LaSalle Street, Suite 2100
Chicago, IL 60602
Phone: 312/551-2130
Fax: 312/551-2131
Email: jrs@mcveyparsky-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 9, 2018, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notice of Electronic Filing:

Matthew L. Williams
SALVI, SCHOSTOK & PRITCHARD, P.C.
218 N. Martin Luther King Jr. Avenue
Waukegan, IL 60085

Ph.: 847.249-1227
Fax: 847/249-0138
E/M: mwilliams@salvilaw.com

McVEY & PARSKY, LLC
Attorney for Defendant
30 North LaSalle Street
Suite 2100
Chicago, IL 60602
Tel: (312) 551-2130
Fax: (312) 551-2131

By: /s/ Jonathan R. Sichtermann
Jonathan R. Sichtermann
Illinois Bar #6313992